

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:23-CV-878-TDS-JEP**

DEMOCRACY NORTH CAROLINA, et al.

Plaintiffs,

v.

ALAN HIRSCH, *et al.*,

Defendants,

and

DESTIN C. HALL, *et al.*,

Intervenor- Defendants.

**STATE BOARD DEFENDANTS’
RESPONSE IN SUPPORT OF
LEGISLATIVE DEFENDANTS’
MOTION TO DISMISS [D.E. 125]**

Defendants, the members and Executive Director of the North Carolina State Board of Elections (collectively, the “State Board Defendants”), through undersigned counsel, respectfully submit this response in support of the Legislative Defendants’ Motion to Dismiss or in the Alternative to Reconsider the Court’s Prior Order On Legislative Defendants’ Prior Motion To Dismiss [D.E. 125] based on the arguments relating to Federal Rule of Civil Procedure 12(b)(6).

In this action, Plaintiffs challenge the changes to North Carolina’s rules for voters who register and cast a ballot during the State’s seventeen-day same-day registration period that ends the Saturday before election day. Initially, the State Board Defendants and the Legislative Defendants brought motions to dismiss for failure to state claims upon which relief can be granted.¹ [D.E. 45 and 47]. This Court denied the motions as to Counts 1 and 2 of the complaint stating,

Plaintiffs here have alleged an Anderson-Burdick claim substantially similar to that of the plaintiffs in Voto Latino. Accordingly, Plaintiffs have cleared the plausibility threshold for a Rule 12(b)(6) motion, which is lower than the likelihood of success standard for preliminary injunctions.

¹ In addition, the Legislative Defendants’ Motion to Dismiss included an argument that the Plaintiffs lacked standing pursuant to Rule 12(b)(1).

(Order [D.E. 63] p 23) This Court denied the motions as to Count 3 of the complaint alleging age discrimination after finding “there is good reason to avoid wading into this novel area of law at this preliminary stage.” (Order [D.E. 63] p 27)

Recently, this Court entered a consent judgment in Voto Latino, et al. v. Hirsch, et al., Case No. 1:23-cv-861, at D.E. 101 (M.D.N.C. 2023) (“Voto Latino”) and Democratic National Committee, et al. v. Hirsch, et al., Case No. 1:23-cv-862, at D.E. 98 (M.D.N.C. 2023) (“DNC”). [D.E. 125.1] These are concurrent cases challenging the same law and based on identical facts to those in this case. Based on the consent judgement entered in Voto Latino and DNC, Plaintiffs have voluntarily dismissed Count 1 of their complaint. [D.E. 133] Legislative Defendants assert that based on the stipulation and consent judgment entered in Voto Latino and DNC, Plaintiffs’ remaining claims in this case are also moot and should be dismissed. [D.E. 125 and 126].

State Board Defendants have reviewed the arguments contained in the briefing submitted by Legislative Defendants in their memorandum of law in support of the motion to dismiss [D.E. 125 and 126] and believe these arguments adequately address the issue before this Court. The State Board Defendants rely on same and join in the Legislative Defendants’ request that this court dismiss the remaining claims outright or as part of its reconsideration of the earlier order [D.E. 63] denying the motions to dismiss the complaint pursuant to Rule 12(b)(6). As a result of the consent judgment entered in Voto Latino and DNC, Plaintiffs have received the core relief sought and as such, their claims in this matter are moot.

For the reasons stated therein, this Court should dismiss the complaint as moot.

Respectfully submitted this the 29th day of May, 2025.

NORTH CAROLINA
DEPARTMENT OF JUSTICE

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CERTIFICATE OF WORD COUNT

I hereby certify that pursuant to Local Rule 7.3(d)(1), the foregoing has a word count of less than 3,125 words not including the caption, signature block, and certification of word count.

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Dated this 29th day of May, 2025.

/s/ Mary L. Lucasse
Mary L. Lucasse
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I, Mary L. Lucasse, hereby certify that on this day the forgoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will provide electronic notice to all counsel of record.

This the 29th day of May, 2025.

/s/ Mary L. Lucasse
Mary L. Lucasse
Special Deputy Attorney General